

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Mountain Union Telecom, LLC  
Registered Owner of ASR Number 1014930  
Dozier, California

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File Number EB-01-SF-449  
NAL/Acct. No. 200332960001  
FRN 0007-3301-03

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: December 31, 2002

By the Enforcement Bureau, San Francisco Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Mountain Union Telecom, LLC, ("Mountain Union"), the registered owner of Antenna Structure Registration ("ASR") number 1014930 in Dozier, California apparently willfully and repeatedly violated Sections 17.4(g) and 17.57 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations ("Rules") by failing to display the antenna structure registration number near the base of the antenna structure and by failing to notify the Commission of a change in ownership information.<sup>1</sup> We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Mountain Union is apparently liable for forfeiture in the amount of five thousand dollars (\$5,000).

**II. BACKGROUND**

2. On March 28, 2002, agents from the FCC Enforcement Bureau's San Francisco Field Office inspected an antenna structure located at 38-17-08 north latitude, 121-5-02 west longitude near Dozier, California. At the time of the inspection, a telephone number was posted, but no ASR number was posted at the base of the antenna structure. According to the FCC's ASR database, on March 28, 2002, Pacific & Eastern Digital Transmission Service was the registered owner of the antenna structure number 1014930. Further investigation revealed that Mountain Union acquired the structure more than six months prior to that date.

3. On April 17, 2002, the San Francisco Field Office issued a Notice of Violation to Mountain Union for violating the Rules by failing to post the ASR number and failure to update the structures ownership information. Mountain Union replied on April 22, 2002, stating that updated ownership information had been submitted to the FCC on Form 854 on April 5, 2002 and the ASR number was posted at the base of the structure on April 19, 2002.

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<sup>1</sup> 47 C.F.R. §§ 17.4(g) and 17.57.

<sup>2</sup> 47 U.S.C. § 503(b).

### III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and "repeated" means the commission or omission of the act more than once or for more than one day.<sup>3</sup>

5. Section 17.4(g) of the Rules states that the ASR number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. At the time of the inspection, the ASR number was not displayed.

6. Section 17.57 of the Rules requires antenna structure owners to immediately notify the Commission using FCC Form 854 upon any change in ownership information. At the time of the inspection, ASR number 1014930 was still registered to the structure's prior owner. Mountain Union failed to timely notify the Commission of the change in ownership. On April 5, 2002, Mountain Union filed the required updated ownership information for the structure with the Commission.

7. Based on the evidence before us, we find that on March 28, 2002 Mountain Union failed to post the ASR number for the tower number 1014930, and failed to timely notify the Commission of the change in ownership of the structure in willful and repeated violation of Sections 17.4(g) and 17.57 of the Rules.

8. Pursuant to Section 1.80(b)(4) of the Rules and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),<sup>4</sup> the base forfeiture amount for failure to post the antenna structure registration number is \$2,000 and the base forfeiture amount for failure to file required forms or information is \$3,000.<sup>5</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the statutory factors listed above, a \$5,000 forfeiture is warranted.

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>4</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4); *American Tower Corporation*, 16 FCC Rcd 1282 (2001) (\$2000 is an appropriate base forfeiture amount for failure to post the ASR).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Mountain Union Telecom, LLC., is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000.00) for willful and repeated violation of Sections 17.4(g) and 17.57 of the Rules.<sup>7</sup>

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mountain Union Telecom, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and the NAL/Acct. No. referenced in the caption.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and must include the FRN and NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.<sup>8</sup>

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729(June 28,2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information

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<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80 and 17.4(g) and 17.57.

<sup>8</sup> See 47 C.F.R. § 1.1914.

contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Mountain Union Telecom, LLC, 851 Irwin Street, Suite 209, San Rafael, CA 94901.

FEDERAL COMMUNICATIONS COMMISSION

David Hartshorn  
Acting District Director, San Francisco Office  
Enforcement Bureau